

# **EXHIBIT A**

## Buntrock, Ross

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**From:** Chuck Steese [csteese@s-elaw.com]  
**Sent:** Monday, January 24, 2011 3:12 PM  
**To:** 'Chuck Steese'; 'Maureen Rahrle'; 'Anthony Osborn'; 'Brendan McMurrer'; 'Bret Dublinske'; 'Brian McAleenan'; 'Bruce Beckner'; 'Christopher Coulston'; 'Christopher Jannes'; 'David Lawson'; 'David Phipps'; 'David Sather'; 'Duane Pozza'; 'Edward Remsburg'; 'Enrico C. Soriano'; 'Carter, David'; 'Gary Joye'; 'George Thomson'; 'Ivan Webber'; 'James Bendernagel'; 'James Gilliam'; 'James Troup'; 'James Wainwright'; 'Jeana Goosmann'; 'Jennifer Bagg'; 'Jeremy Cross'; 'John Fatino'; 'Canis, Jonathan'; 'Joshua Simon'; 'Katherine Leigh McDaniel'; 'Kris Holub Tilley'; 'Lawrence McLellan'; 'Marc Goldman'; 'Mark O'Connor'; 'Mary Ellen Hassell'; 'Maxwell Blecher'; 'Hazzard, Michael'; 'Michael Hunseder'; 'Mike Jacobs'; 'Monica Colella'; 'Paul Lundberg'; 'Phillip Stoffregen'; 'Rachel Rowley'; 'Richard Lozier'; 'Robert Holz'; 'Buntrock, Ross'; 'Sandy Potter'; 'Joyce, Stephanie'; 'Steve Nelson'; 'Thomas Fisher'; 'Thomas Walton'; 'Tony Lee'  
**Subject:** New Cases Mandating Dismissal of Certain Defendants' Counterclaims  
**Attachments:** Westlaw\_Document\_11\_33\_38.doc

Counsel:

Last week, the FCC issued a decision in *All American Telephone Co. et al. v. AT&T*, 2011 WL 194539 (F.C.C.) (Jan. 20, 2011), a traffic pumping case. A copy of the decision is attached to this email. In that decision, the FCC specifically held that that Communications Act claims are limited to claims by a customer against the carrier who provided it with service:

During the past twenty years, the Commission has repeatedly held that an allegation by a carrier that a customer has failed to pay charges specified in the carrier's tariff fails to state a claim for violation of any provision of the Act, including sections 201(b) and 203(c) -- even if the carrier's customer is another carrier. These holdings stem from the fact that the Act generally governs a carrier's obligations to its customers, and not vice versa. Thus, although a customer-carrier's failure to pay another carrier's tariffed charges may give rise to a claim in court for breach of tariff/contract, it does not give rise to a claim at the Commission under section 208 (or in court under section 206) for breach of the Act itself.

*Id.* at ¶10. As a result, the Court held that the traffic pumping parties could not maintain Communications Act claims against the long distance carriers for withholding payment:

In sum, all three of the CLECs' claims rest on the assertion that AT&T's failure to pay their tariffed access charges violates section 201(b) and/or section 203(c) of the Act. That assertion is erroneous. The law is settled that a carrier-customer's failure to pay tariffed access charges does not violate either section 201(b) or section 203(c) of the Act. Accordingly, all three of All-American's claims must be denied for failure to state a claim cognizable under section 208 (or any other provision) of the Act.

*Id.* at ¶16.

Several of the LEC and FCSC Defendants have brought claims against Qwest under Sections 201(b), 202 or 203(c) of the Communications Act. These claims cannot stand in light of the *All American* decision. As a result, Qwest requests that the following parties dismiss the following claims/counterclaims:

<b>Defendant/Counterclaimant</b>	<b>Claims</b>
Dixon, Interstate 35 and Farmers and Merchants	Counts III (Section 201(b)) and IV (Section 202(a))
Great Lakes/Superior	Counts II (Section 201(b)), III (Section 202(a)), IV (Section 203) and each paragraph of Prayer for Relief that refers to sections of the Communications Act
Aventure	¶¶ 18, 20 of Count II and ¶24 of Count III as well as the requests for attorneys' fees under Section 206
Free Conferencing Corporation	Counts II (Section 201(b)), III (Section 202(a)), and each paragraph of Prayer for Relief that refers to sections of the Communications Act and the request for attorneys fees
Global Conference Partners	Counts II (Section 201(b)), III (Section 202(a)) and V (declaratory relief) to the extent it refers to Sections 201 or 202
Futurephone	Counts I (Section 201(a)), II (Section 201(b)), III (Section 203(c)), IV (Section 202(a)), request for relief for attorneys fees under the Communications Act

If you do not voluntarily move to withdraw these claims, Qwest plans to move to dismiss in approximately two weeks. If forced to file a motion, Qwest will seek the fees and costs it incurs in being forced to file the motion. Please let us know by Monday next week, January 31, 2011 if you will voluntarily withdraw these claims.

Very respectfully,